(5)

Division Bench

CF1002

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION (C) NO. 5401 OF 2006

PETITIONER : Smt. Nirmala Mahulkar, wife of Shri Y.R. Mahulkar, aged about 65 years, resident of Pachpedi Naka, Raipur.

VS

RESPONDENTS :

1. State of Chhattisgarh, through the Secretary, Ministry of Excise, D.K.S. Bhawan, Raipur.
2. The Collector, Raipur.
3. The Assistant Commissioner (Excise), Raipur.
4. Niranjan Agarwal, son of Shri Ramlal Agarwal, aged about 45 years FL-III Licensee, Hotel Comic, Pachpedi Naka, Dhamtari Road, Raipur.

S416/06 Advocate M.L. Sahu 24/07/06

P.R. No. Presented Noted

OATH COMMISSIONER APARNA MALVIYA CG2073/96 28/07/06 Bilaspur Chhattisgarh

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WRIT PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA

XI-HC-22

(102)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 5401 सन् 2006

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH :
HON'BLE SHRI V.K.SHRIVASTAVA &
HON'BLE SHRI DHIRENDRA MISHRA, JJ

11.01.2007

Shri B.P.Sharma, learned counsel for the petitioner.

Shri Vinay Harit, learned Dy. Advocate General for the State/respondent Nos. 1,2 & 3.

Heard.

From perusal of the order passed by this Court dated 05.10.2006 only question remains to be explored is the legality of grant of renewal of licence in favour of the 4th respondent.

In pursuant to the said order the petitioner has filed I.A. No. 10137/2006.

Considered. Allowed.

Documents (1) Draft amendment dated 18.09.2000, (2) Circular dated 15.06.2002 and (3) second paged of letter dated 09.08.2002 taken on record.

During argument learned counsel for the petitioner contended that in accordance with circular dated 09.08.2002 for bar licence Government had prescribed necessity of five rooms or more whereas the first floor of building in possession of respondent No.4 does not fulfill the criteria of five rooms. That apart the business place is situated near a temple and national highway. He further referring to Annexure P-2 contended that without necessary enquiry the proceedings have been conducted and orders have been passed. Learned counsel for respondents No.1 to 3 opposed the same.

Here it is pertinent to mention that petitioner herself let the first floor of her building for the business of bar to respondent No.4 who after obtaining license is continuing the said business therein. State Government vide notification dated 02/02/2006 has amended the rules. Admittedly the

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(103)

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

temple is not managed by any public trust and no material is available to establish that whatever conditions have been prescribed after amendment is being violated.

So far the dispute regarding availability of five rooms is concerned that condition has been imposed by the Government and that was variable. Even otherwise from the proceedings enshrined in Case No. 35/2004-05 of the department it is evident that Officers of the department verified the place and certified availability of six rooms. Even in case there is any dispute that is a dispute of fact which requires elaborate evidence and while dealing any matter under Article 226 of the Constitution of India this Court is not obliged to enter in any such type of factual enquiry. After State amendment, that remains relevant, and not the Draft amendment which has no force of implementation.

According to the averment of the petition the petitioner is a landlord and respondent No.4 his tenant therefore if any business in contravention of any law is being carried out by the tenant, petitioner may proceed to evict him in accordance with law.

In view of the above we are of the considered opinion that there is nothing which may call for interference by this Court by stepping in Article 226 of the Constitution.

With the aforesaid observation the petition is disposed of. However the petitioner if advised may take suitable steps for her redressal in accordance with law before appropriate forum.

raju

Sd/-
V.K. Shrivastava
Judge

Sd/-
Dhirednra Mishra
Judge

(पीछे देखिये)

8/5/11